

# Queensland Building and Construction Commission (Minimum Financial Requirements) and Other Legislation Amendment Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No.30

made under the

*Queensland Building and Construction Commission Act 1991*  
*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Queensland Building and Construction Commission (Minimum Financial Requirements) and Other Legislation Amendment Regulation 2019*

### Authorising law

Section 116 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Section 165 of the *State Penalties Enforcement Act 1999*.

### Policy objectives and the reasons for them

As part of its suite of security of payment reforms, in late 2018, the Queensland Government released a new framework for the Minimum Financial Requirements (MFR) for licensing in the building and construction industry.

The new MFR framework aims to strengthen reporting requirements, clarify what can and cannot be included when calculating a licensee's assets and revenue, and improve data quality and availability for the State's building regulator, the Queensland Building and Construction Commission (QBCC). This will enable the QBCC to more effectively monitor the financial sustainability of licensees and act to mitigate the impact on the building and construction industry at an earlier stage.

The changes are being implemented in phases. Phase 1 began on 1 January 2019 through the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (MFR Regulation). Phase 1 established the foundation for the new MFR framework and is presently operating

alongside the existing MFR Policy, which was made by the Queensland Building and Construction Board.

Phase 2 of the reforms commences on 2 April 2019. This phase will implement the remainder of the MFR framework and complete the transfer of the existing MFR Policy requirements into regulation. Due to the substantive parts of the MFR Policy being transferred into the regulation, the policy will also be repealed on commencement of the Phase 2 of the reforms.

## **Achievement of policy objectives**

The *Queensland Building and Construction Commission (Minimum Financial Requirements) and Other Legislation Amendment Regulation 2019* (Amendment Regulation) will implement Phase 2 of the MFR reforms.

The Amendment Regulation will build on the Phase 1 reforms by requiring higher-risk licensees to provide more detailed financial information. This will require licensees in categories 4-7 to provide detailed debtor information (made clear in the definition of 'signed financial statements'), allowing the QBCC to use a 'balanced scorecard' approach to identify at-risk licensees. This will provide a more complete financial picture of those whose operational sustainability most critically affects the industry.

The Amendment Regulation also requires self-certifying licensees, who are considered lower risk, to self-report their 'current ratio' of assets to liabilities. This will help the QBCC identify whether the licensees can continue to meet their financial commitments, such as payments owed to subcontractors and suppliers. More licensees will be able to self-report under the Amendment Regulation, with the maximum revenue threshold for Self-Certification category 2 licensees being increased from \$600,000 to \$800,000 (new section 11H). This is to reflect economic changes within the industry, including inflation.

Other reforms implemented through the Amendment Regulation include providing the QBCC with the power to engage the services of an appropriately qualified accountant to audit financial information or MFR reports they reasonably believe to contain false or misleading information (new section 17Q). The QBCC may recover the reasonable costs of such an audit from the relevant licensee as a debt. The Amendment Regulation also clarifies the criteria regarding how related entity loans are assessed to ensure that all debts are collectable (amendments to section 15 of the MFR regulation). Similarly, licensees will also need to provide additional information about the financial position of a covenantor to better enable the QBCC to assess the covenantor's solvency and whether amounts assured to a licensee can be called upon (new sections 17B and 17C).

To further increase transparency, as well as discourage the submission of multiple financial reports, the Amendment Regulation (new section 11B) provides that any substantive changes to a submitted MFR report will need to be highlighted and supported by updated financial information.

The Amendment Regulation also prescribes some new offences and penalties for failing to meet the requirements, including failure to notify the QBCC of changes in a covenantor's financial position. Additionally, the Amendment Regulation includes changes to the *State Penalties Enforcement Regulation 2014* to include a new penalty infringement notice offence for failing to keep internal management accounts.

Finally, the Amendment Regulation will repeal the existing MFR policy, with the relevant provisions being transferred across, and will make minor consequential amendments to the Queensland Building and Construction Commission Regulation 2018.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objectives of the Act.

## **Inconsistency with policy objectives of other legislation**

There is no inconsistency with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The policy objectives can only be achieved by making the Amendment Regulation.

## **Benefits and costs of implementation**

The Amendment Regulation will strengthen the new MFR framework for licensees in Queensland's building and construction industry. It is not expected to impose a significant financial burden on licensees, and in some cases may reduce financial burden, e.g. raising the self-declaration threshold. While the Amendment Regulation will impose additional financial monitoring responsibilities on the QBCC, it will also have the benefit of providing the QBCC with additional financial information. This will allow it to better detect those licensees who may be operating in a financially unsustainable manner and act to mitigate the impact on the building and construction industry.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

The MFR reforms are based on the results of public consultation on a discussion paper titled 'The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry', which was held from 12 September to 9 October 2018. The proposals that have been implemented are those that received support during consultation. Some proposals that did not receive a high level of support, for example due to their financial burden or inconsistency with Australian Accounting Standards, were not included in the Amendment Regulation.

Members of the Ministerial Construction Council (which includes representatives from the National Association of Women in Construction, the Master Plumbers' Association of Queensland, Master Electricians Australia, the National Fire Industry Association, Master Builders Queensland, and the Housing Industry Association) were consulted on the proposed MFR reforms and draft Amendment Regulation. Members were generally supportive of the reforms included in the Amendment Regulation

The Queensland Law Society's Construction and Infrastructure Law Committee was consulted and was supportive of the proposed reforms.

Accountancy bodies CPA Australia and the Chartered Accountants of Australia and New Zealand were consulted on the proposed reforms and draft Amendment Regulation. These bodies provided advice about technical drafting matters which was incorporated as far as possible.

The Queensland Productivity Commission was consulted and determined that further regulatory impact analysis was not required as there were not expected to be significant adverse impacts.